

EMERGENCY

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,

Petitioner,

vs.

CARMEN PERZECCHINO JR.,

Respondent.

Court of Appeals No. A-_____

Trial Court No. 3KN-19-00318 CR

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

**MOTION FOR EMERGENCY CONSIDERATION OF PETITION
FOR REVIEW**

A. Introduction

The State of Alaska seeks emergency interlocutory review of Superior Court Judge Jennifer Wells's October 1, 2020 decision granting the State's motion to allow a SART nurse to testify via videoconference due to her fragile health in light of the COVID-19 pandemic. Although the trial court granted the State's motion, this issue is uniquely related to the current pandemic and is likely to arise again with witnesses who are reluctant to testify in person due to health concerns. The State seeks this Court's immediate discretionary review in order to avoid costly retrials if cases such as this are reversed years later.

B. Issue Presented for Review

Does permitting the videoconference testimony of a witness with serious health conditions during a pandemic violate a defendant's constitutional right to confrontation?

C. Factual Background

In 2018, the State received a CODIS database hit from an unsolved 2001 sexual assault case. Carmen Perzechino Jr. was subsequently indicted, in 2019, for first-degree sexual assault and kidnapping.

The State filed a motion to allow the nurse who conducted the 2001 sexual assault examination to testify via videoconference. The nurse suffers from an autoimmune disorder, multiple sclerosis, and two bone grafts. In light of the current COVID-19 pandemic, the nurse is worried that her health or life could be at risk if she is forced to testify in person. Perzechino opposed the State's motion, arguing that video testimony would violate his constitutional right to confront witnesses.

Judge Wells granted the State's motion to allow the nurse to testify via video.

D. Nature of Emergency and Date and Hour by Which Decision is Needed

Although the trial court granted the State's motion, immediate review of the constitutional issue is necessary to ensure that the court, parties, witnesses, and jurors are not needlessly endangered by gathering together for a trial while citizens are urged to stay at home and implement social distancing measures during a global pandemic. Immediate review will also prevent the waste of valuable time and resources in the event an appellate court holds that video testimony violates a defendant's right of confrontation after

Perzechino or another defendant raises this issue on appeal following a conviction. The lack of jury trials since the COVID-19 outbreak has created a significant backlog of cases awaiting trial, and the immediate review of novel pandemic-related legal issues will help ensure that strained resources are used efficiently as jury trials begin again.

Although jury trials are generally suspended, the presiding judge has allowed this case to proceed to a jury trial based on exceptional circumstances. Voir dire began on Monday, October 12, 2020, and is expected to last several weeks. Accordingly, a decision is needed before the jury is sworn in and jeopardy attaches.

The State has alerted Judge Wells and Perzechino's attorney to the fact that it intended to petition the trial court's decision regardless of the outcome, based on the public policy and resource allocation concerns involved. Judge Wells declined to stay the case and directed jury selection is to commence Monday October 12, 2020.

The state therefore respectfully asks that this court reach a decision by 12:00 p.m. on the afternoon of October 16, 2020. In addition, the State requests this Court direct Judge Wells not to swear in a jury before this Court decides the issue raised in this petition.

E. Notification and Service of Opposing Counsel

Counsel for Perzechino was provided with a copy of the state's petition for review by email and mail today, together with a telephone call alerting counsel to the petition.

F. Parties' Counsel

State of Alaska:

Donald Soderstrom
Office of Criminal Appeals
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501
Phone: 907-269-6260
Fax: 907-269-3697
Email: donald.soderstrom@alaska.gov / ocapleadings@alaska.gov

Counsel for Mr. Perzechino:


Andy Pevehouse
Gilman & Pevehouse
130 South Willow Street, Suite 3
Kenai, Alaska 99611
Phone: 907-283-2600
Fax: 907-283-2009
Email: alpevehouse@gilmanlawak.com / receptionist@gilmanlawak.com

G. Conclusion

This court should grant emergency review of the State's petition for review and affirm Judge Wells's decision to allow the nurse to testify via videoconference.

DATED October 12, 2020.

CLYDE "ED" SNIFFEN, JR.
ACTING ATTORNEY GENERAL

By: 
Donald Soderstrom (1205046)
Assistant Attorney General